IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal Nos.3076 to 3078 of 2001

S.R.Muthusamy ... Appellant in all WAs.

Vs.

The Collector,
Periyar District,
Erode. ... Respondent in all WAs.

Writ appeals filed under Clause 15 of the Letters Patent against the common order dated 18.06.2001 made in W.P.Nos.11557 to 11559 of 1994 filed under Article 226 of the Constitution of India praying for issue of writs of certiorari calling for the records relating to the proceedings in N.Dis.Nos.1977/94/J1; 1966/94/J1; 1961/94/J1 respectively dated 25.3.94 on the file of the Collector, Periyar District at Erode (the respondent herein) and to quash the same.

For Appellant : Mr.P.Raja for
Mr.S.Subbiah

For Respondent : Mr.P.Subramanian,
Government Advocate

COMMON JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

These writ appeals are filed against the common order passed by the learned single Judge dated 18.06.2001 in W.P.Nos.11557 to 11559 of 1994.

2. For convenience, we shall describe the parties as shown in the writ petitions. The appellant in all the three writ petitions is one and the same.

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3. Among the three writ petitions, let us refer the factual details relating to the first writ petition No.11557 of 1994. According to the petitioner he was the successful bidder of arrack shop No.29 in Errangattur, Sathiamangalam Taluk, Periyar District, for the year 1984-1985, at a licence fee of Rs.7500/- and the licence period is from 16.07.1984 till 30.06.1985. After completion of the licence period, his initial security deposit was also settled by the officers of the Excise Department. There was no arrears of kist payable to the Government. While so, he was surprised to receive the notice dated 21.01.1994 from the respondent-Collector, Erode, Periyar District, as if a decision had been taken by the Commissioner of Excise and Land Revenue, as per the order of this Court dated 30.01.1985 and 06.08.1985 rendered in a batch of writ petitions regarding the remission of the Excise Duty, on account of the short supply of molasses. On receipt of the said notice, the petitioner sent a reply through his counsel on 15.02.1994 and requested the respondent to furnish a copy of order passed by this Court, suggestion made by the Accountant General as well as the proceedings of the Commissioner, Prohibition and Excise Department to enable him to make an effective representation. However, the respondent, without furnishing the required materials, has passed the impugned order dated 25.03.1994 as if that the petitioner did not attend the enquiry. Further he was directed to approach the Commissioner, Prohibition and Excise and High Court for the required copies of orders. In the same order, the respondent has directed the petitioner to pay a sum of Rs.25,498.15 within a period of two weeks from the date of receipt of the copy of the said order. The said order was under challenge by way of writ petitions. Similar averments made in the other writ petitions.

4. The respondent has not filed counter affidavit controverting all the averments/allegations made by the petitioner.

5. The learned single Judge, by an order dated 18.06.2001, after finding that the petitioner has not furnished details as to the indent raised by him as against the total entitlement of quantity of arrack for the respective shops as against the show cause notices dated 21.01.1994, has rejected his claim and consequently dismissed the writ petitions.

6. Learned counsel appearing for the petitioner/appellant, after taking us through the show cause notices, reply sent by the petitioner through his counsel, the request made therein, ultimate

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order passed by the respondent as well as the order of the learned single Judge, has contended that in the absence of the order of this Court as well as the scheme arrived at by the Commissioner, Prohibition and Excise, pursuant to the order of this Court, the objection raised by the Accountant General, the petitioner was disabled from making effective representation. No doubt, in the impugned order, the respondent has stated that the petitioner is free to approach this Court as well as the Commissioner, Prohibition and Excise to ascertain all the details. It is true that along with the initial show cause notice dated 21.01.1994, the respondent has enclosed a chart containing the details such as cost payable, quantity to be lifted, actual quantity lifted and supplied, amount payable per month, amount paid by the licencee/petitioner and the balance payable by him. As rightly pointed out by the learned counsel for the petitioner, though the above mentioned details are available along with the show cause notice, it is not clear the basis on which the amounts payable by the licencee were fixed. According to the learned counsel for the petitioner, he is not a party to the batch of writ petitions in which orders were passed by this court issuing direction to the Commissioner of Prohibition and Excise to arrive at a scheme. In such circumstances, the grievance/claim made by the petitioner cannot be ignored lightly.

7. We have already observed that the respondent is not justified in asking the petitioner to approach this Court as well as the Commissioner, Prohibition and Excise for such details. When the Officer viz., the respondent was having all the details, it is but proper on his part to supply the required materials in order to putforth the stand of the petitioner. Unfortunately, the learned single Judge has not adverted to these relevant aspects and rejected the request of the petitioner. It is not in dispute that the petitioner has been offered opportunity by way of issuance of show cause notice. However, the point is as to whether the clarification sought for by the petitioner is fulfilled by the respondent before determining the amount payable by the petitioners. In such circumstances, we are in agreement with the claim made by the learned counsel for the petitioner.

8. In such circumstances, we have no other option except to quash the impugned proceedings in all these three writ petitions. However, we make it clear that the respondent, the Collector, Erode District, Erode, is free to proceed afresh, if he so desires, by furnishing all the required details or if he feels that at this juncture viz., after 21 years the requirements of the petitioner cannot be complied with, he is free to close the proceedings.

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9. With the above observations, these writ appeals are allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Collector,
Periyar District,
Erode.

+ 3 cc to Mr.S.Subbiah, Advocate SR 56213

+ 1 cc to Government Pleader SR 55543

GM(CO)
CGS(28.11.2006)

W.A.Nos.3076 to 3078
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